IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00039-CNS

DJOBO BAH,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;
ARTHUR WILSON, in his official capacity as Field Office Director, U.S. Immigration and Customs Enforcement;
JOHNNY CHOATE, in his official capacity as Warden of the Aurora Immigration Detention Facility;
PAMELA JO BONDI, in her official capacity as Attorney General of the United States;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; and
THE BOARD OF IMMIGRATION APPEALS,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's January 12, 2026, Order, ECF No. 5, Respondents respond to Petitioner's Amended Application for a Writ of Habeas Corpus, ECF No. 6 (the "Petition"). Petitioner asserts violations of the Immigration and Nationality Act ("INA") and the Fifth Amendment alleging that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b)(2). *Id.* at 13-16. As explained below, the Court should deny the Petition because Petitioner's detention is authorized by statute.

INTRODUCTION

This case involves a question of statutory interpretation. The Department of

Homeland Security ("DHS") is detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A) that applies to noncitizens[1] who, like Petitioner, are treated as "applicants for admission" because they entered the country without inspection and have never been admitted. Petitioner claims he is not subject to § 1225(b)(2)(A) but is instead subject to § 1226(a). The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily not eligible for bond hearings, while those detained under § 1226(a) are. Petitioner seeks "immediate release." *Id.* at 17.

The Court should conclude that Petitioner is an applicant for admission under § 1225(b)(2) based on the statutory text, the Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the fact that Petitioner was in expedited removal proceedings under § 1225(b)(1). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of *Jennings* supports Respondents' view, and the reasoning of many lower court decisions does not square with the Supreme Court's interpretation of the statute.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mali. Ex. A, Decl. of Nathan Horn (Jan. 22, 2026) ¶ 4. On June 12, 2024, Customs and Border Protection ("CBP") apprehended Petitioner near Calexico, California shortly after he illegally entered the country by crossing the United States-Mexico border. *Id.* ¶ 5. Petitioner was not inspected and admitted or paroled. *Id.* CBP determined that Petitioner is inadmissible, placed him in

[1] The INA uses the term "alien," which is defined as "any person not a citizen or national of the United States." *See* 8 U.S.C. § 1101(a)(3).

expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and detained him. *Id.* ¶¶ 6-7. Petitioner claimed fear of persecution. *Id.* ¶ 8. U.S. Citizenship and Immigration Services ("USCIS") attempted to conduct a credible fear interview pursuant to § 1225(b)(1)(A)(ii) but was unable to secure an appropriate translator. *Id.* ¶¶ 8-9.

In October 2024, USCIS issued a Notice to Appear, initiating removal proceedings under 8 U.S.C. § 1229a, and Petitioner was released from ICE custody. *Id.* ¶¶ 10-11. Petitioner applied for Asylum and for Withholding of Removal. *Id.* ¶ 12.

On June 19, 2025, ICE officers arrested and re-detained Petitioner pending resolution of his removal proceedings. *Id.* ¶ 14. In July 2025, Petitioner filed a motion for a custody redetermination hearing before the Immigration Judge ("IJ"), which was denied because the IJ found it lacked jurisdiction to redetermine his custody. *Id.* ¶¶ 16-17.

On October 22, 2025, Petitioner appeared before the IJ for an individual hearing. *Id.* ¶ 19. In November 2025, the IJ issued a written decision granting Petitioner asylum. *Id.* ¶ 20. The government appealed that ruling. *Id.* ¶ 21. The IJ's decision is not administratively final because of the pending appeal. *Id.* ¶ 23. Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *Id.* ¶¶ 24-25.

The Petition. Petitioner asserts two claims for relief. ECF No. 6 at 13-16. First, he alleges that Respondents have violated the INA by detaining him under § 1225(b)(2)(A). *Id.* at 15-16. Accordingly, Petitioner claims that he is a member of the *Bautista* class. *Id.* at 5. Second, he alleges a violation of his due process rights because (1) the IJ denied his requested bond and (2) he remains detained during appellate review of the IJ's grant of asylum. *Id.* at 11-14. As relief, he requests "immediate release." *Id.* at 17.

LEGAL BACKGROUND

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of noncitizens who are "applicants for admission." *See* 8 U.S.C. § 1225(a)(1). The scope of § 1225 was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case, as in this one, "[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c)," 583 U.S. at 289, the Supreme Court's explanation in *Jennings* of § 1225's scope should guide the Court's analysis here. Five key points from *Jennings* are set forth below:

1) **Section 1225 applies to "applicants for admission," a term that includes noncitizens who are unlawfully present and never admitted.**

Section 1225 provides, in relevant part, that "[a]n alien present in the United States who has not been admitted ... shall be *deemed* for purposes of this chapter [to be] an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court confirmed that § 1225 applies to "applicants for admission," and that this term applies to *both* (a) an "arriving alien," as well as (b) an individual who is *present* in the United States but has not been "admitted" through a lawful entry at a port of entry.[2]

The *Jennings* Court recognized that the statute uses "applicant for admission" as a term of art. "Under . . . 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for

[2] The INA defines "admission" to mean "lawful entry" after "inspection and authorization by an immigration officer"—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A).

admission.'" 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are "treated as"—in the words of § 1225(a)(1), are "deemed" to be—"applicants for admission."

2) The term is not limited to noncitizens who have submitted an application.

The *Jennings* Court's discussion of "applicant for admission" made clear that the term is not limited to noncitizens who have submitted an application. Rather, there are two criteria to be an applicant for admission: "an alien who [1] 'is present' in this country but [2] 'has not been admitted' is treated as 'an applicant for admission.'" *Id.* at 287.

The Court commented later in its opinion that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289. But the reference to "aliens seeking admission" did not add a new "seeking admission" criterion for § 1225. Rather, this reference reflected the Court's prior explanation that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, "treated as" "applicants for admission." *Id.* at 287.

Indeed, § 1225 elsewhere recognizes that the *status* of being an applicant for admission is one way that a noncitizen may be "seeking admission." It states, "All aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). Section 1225 thus confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission *or* can "otherwise" seek admission by directly applying.

3) Section 1225(b) applies to all applicants for admission.

The *Jennings* Court's discussion of § 1225's scope indicates that "applicants for

admission" does not somehow *exclude* those who entered without inspection years ago. The Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission. One subcategory applies to those arriving noncitizens who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287 (citing § 1225(b)(1)(a)(i)). Another subcategory applies to noncitizens who are: (1) designated by the Attorney General in her discretion; (2) unlawfully present without being admitted; and (3) recent arrivals. That is, it applies to those who have "not been admitted or paroled into the United States, and … ha[ve] not affirmatively shown … that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *See id.*; § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to "expedited removal." *Jennings*, 583 U.S. at 287.

The Court then explained that *all* applicants for admission who fall outside those narrow two subcategories are covered by the *second* subsection of § 1225(b)—*i.e.,* § 1225(b)(2). It described § 1225(b)(2) as a "catchall provision that applies to all 'applicants for admission' not covered by" § 1225(b)(1). *Id.*

Thus, a noncitizen who meets the general definition of applicant for admission but does not fall within the two § 1225(b)(1) subcategories described above is still an "applicant for admission" who falls under the "catchall" provision of § 1225(b)(2).

4) In § 1225, Congress did not grant applicants for admission a right to bond.

Jennings recognized that § 1225 does not provide for a bond hearing. It explained that Congress has provided that aliens covered by § 1225(b)(2) generally "shall be

detained" during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for proceedings under 8 U.S.C. § 1229a.

5) Section 1226, in contrast, provides for detention, and bond hearings, for other categories of noncitizens subject to removal.

The *Jennings* Court recognized that a different statutory provision—§ 1226(a)—governs the detention of other noncitizens, including those "admitted." It explained,

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more ... classes of deportable aliens.' § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. *See* §§ 1227(a)(1), (2).

583 U.S. at 288. Thus, § 1226(a) extends to those who were admitted.

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize § 1225(b)(2) and § 1226(a) authorize detention for *different* sets of individuals:

> U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Id. at 289. In distinguishing between these detention authorities, the Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

ARGUMENT

I. Petitioner is properly subject to mandatory detention under § 1225(b)(2)(A).

As explained above, § 1225(b)(2) applies to "applicants for admission," which include noncitizens who entered without inspection and have been present in the country. Here, Petitioner has not been "admitted"—*i.e.*, he has not made a "lawful entry ... after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); Ex. A ¶¶ 6, 14, 24. The Supreme Court's explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner's position is treated as an "applicant for admission."

A. The statutory language establishes that § 1225 applies to Petitioner.

Petitioner claims that § 1225 does not apply because he is not an "arriving" noncitizen as described in the section's title. ECF No. 6 at 15-16. He argues that the term only applies to "individuals who present themselves at a port of entry." *Id.* at 4.

As *Jennings* explained, the term "applicants for admission," encompasses *both* those just arriving *and* those who entered without inspection. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, § 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing here and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "affirmatively shown ... that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

In *Jennings*, the Supreme Court expressly recognized that § 1225(b)(2), which refers to a "broader" category of noncitizens than those described in § 1225(b)(1), applies to all "applicants for admission" who do not fall within § 1225(b)(1). 583 U.S. at 287. Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving who do not fall within § 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

Petitioner points to the phrase "arriving aliens" in § 1225(b)(2)(A) to argue that the statute does not apply because he was "apprehended within the interior of the United States and placed in removal proceedings." ECF No. 6 at 4. Petitioner was initially processed near the border with Mexico and subjected to expedited removal proceedings under § 1225(b)(1). Ex. A ¶¶ 5-7. As such, Petitioner was identified at the border by CPB as an "arriving" noncitizen subject to § 1225. In any event, as explained, the term "applicant for admission" as defined in *Jennings* includes no additional requirement that the person be detained at the border.

Nor does the statute suggest otherwise. Section 1225(b)(1) contains no "seeking admission" language. Its detention provision applies, in the Attorney General's discretion, even to some noncitizens who are not "arriving" at the time of their inspection by an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an "alien ... who is arriving in the United States *or* is described in clause (iii)" (emphasis added)); *id.* § 1226(b)(1)(A)(iii) (describing a noncitizen "who has not affirmatively shown" that they have "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility").

Other parts of § 1225 confirm that *anyone* falling within the category of "applicant for admission" is deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens … who are applicants for admission or *otherwise seeking admission* … shall be inspected by immigration officers." (emphasis added)); *id.* § 1225(a)(5) ("An applicant for admission may be required to state … the purposes and intentions of the applicant *in seeking admission*" (emphasis added)).

In short, *Jennings* confirmed that all noncitizens who are "applicants for admission" are "seeking admission" by virtue of that status. Thus, § 1225 applies to Petitioner.

B. Section 1225 applies to noncitizens seeking admission regardless of whether the noncitizen is apprehended at a port of entry.

Petitioner argues that § 1225(b)(2)(A) only applies to noncitizens that are "coming to the United States at a port of entry" and does not apply to noncitizens "already present within the interior" of the United States. ECF No. 6 at 4.

But, as discussed above, interpreting § 1225(b)(2)(A) to extend only to *new* arrivals does not comport with the text of § 1225 or make sense in the context of the whole section.

Additionally, the legislative history weighs in favor of Respondents. Before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), § 1225 provided for the inspection of noncitizens only when they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990). It required that such noncitizens be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens who "entered without inspection" were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994) and placed in deportation proceedings, where they could be eligible for bond. *Id.* § 1252(a)(1) (1994). In short, whether a noncitizen was placed in exclusion or deportation proceedings

depended on whether they had "entered" the country. But this "resulted in an anomaly"—"non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while noncitizens who presented themselves at a port of entry ... were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The IIRIRA sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a general 'removal' proceeding." *Id.* Congress thus expanded § 1225 to include all applicants for admission—*i.e.*, all noncitizens arriving or already present not lawfully admitted. The House Judiciary Committee Report confirms this intent. H.R. Rep. No. 104-469, pt. 1, at 225 (1996).

If the Court interprets § 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA and recreate the pre-IIRIRA incentives for those entering without inspection. A statutory interpretation that would allow applicants for admission to avoid mandatory detention simply by evading officers when they enter the country would enshrine in our law "a perverse incentive to enter at an unlawful rather than a lawful location." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

II. Petitioner has been afforded due process as required under § 1225(b)(2)(A).

Petitioner alleges two due process violations: (1) the IJ's denial of bond, and (2) his continued detention following the IJ's asylum determination. ECF No. 6 at 11-13.

To establish a due process violation, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been ... admitted into the country

pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (cleaned up). There, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140. Petitioner has received the due process that afforded in 8 U.S.C. § 1225(b)(2)(A).

Second, Petitioner has not shown any prejudice. He has not shown that he is being denied procedures in his immigration proceedings, where he can challenge the determination that § 1225(b)(2)(A) applies. He thus has not shown a violation of procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As another Court in this District has explained in analyzing a due process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, No. 25-cv-01120-GPG (D. Colo. May 21, 2025), ECF No. 11 at 22.

Under § 1225(b)(2)(A), Petitioner is properly subject to continued detention during the pendency of the appeal of the IJ's asylum decision. *See Jennings*, 583 U.S. at 302-03 ("§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings"). In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court

explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention pending removal proceedings. *See id.* The Court reasoned that the "definite termination point" of the detention at the end of removal proceedings assuaged any constitutional concern. *See Demore*, 538 U.S. at 529-30.

The same is true here. Petitioner's removal proceedings are moving toward a definite endpoint. *See* Ex. A at ¶¶ 20-23. His detention will conclude with the conclusion of the appeal of the IJ's asylum decision. Congress's decision to detain him pending removal is a "constitutionally permissible part of [this] process." *Demore*, 538 U.S. at 531; *see, e.g., Arevalo Millan v. Trump*, No. 5:25-CV-01207-JWH-PDX, 2025 WL 3050080, at *3 (C.D. Cal. Sept. 2, 2025) (rejecting petitioner's argument that "an administrative appeal [of an IJ's grant of asylum] is not part of a 'proceeding under [8 U.S.C.] § 1229a'").

III. No nationwide declaratory relief entitles Petitioner to release.

Petitioner claims that he falls within the *Bautista* nationwide class. ECF No. 6 at 5. This Court should not grant preclusive effect to the declaratory judgment issued in that case—which is currently on appeal—for multiple reasons.

First, it is not clear that Petitioner is a member of the class. That class is defined, as relevant here, to include noncitizens only if they "were not . . . apprehended upon arrival." *Maldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal.), ECF No. 93 at 3. It is thus not clear that the class includes Petitioner, as he was apprehended by CBP shortly after he illegally crossed the border into the United States. Ex. A ¶ 5.

Second, even if the Court determines Petitioner is a member of the *Bautista* class,

it should not afford that judgment preclusive effect. For a prior judgment to have preclusive effect, the judgment must be "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); *see* Restatement (Second) of Judgments § 1 (1982). The *Bautista* court addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Under habeas principles, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. *Calderon v. Ashmus*, 523 U.S. 740 (1998).

Third, while courts have "discretion to determine when [collateral estoppel] should be applied," *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979), offensive collateral estoppel is disfavored when applied against the federal government, *see United States v. Mendoza*, 464 U.S. 154, 159 (1984).

Fourth, the existence of prior inconsistent judgments weighs against applying issue preclusion. *Parklane Hosiery*, 439 U.S. at 330-31. District courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Bautista* court. *See, e.g.*, *Altamirano Ramos v. Lyons*, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (citing cases). These varying rulings support not giving the *Bautista* judgment preclusive effect. *See* Order, *Calderon*

Lopez v. Lyons, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12 at 11 & 28.

Fifth, the pendency of an appeal to the Ninth Circuit of the district court's *Bautista* decision supports not giving that decision preclusive force at this time. While the mere "pendency of an appeal does not prevent application of the collateral estoppel doctrine," *Ruyle v. Cont'l Oil Co.*, 44 F.3d 837, 846 (10th Cir. 1994), applying preclusive force to a judgment that has been appealed can cause difficulty because a judgment that is reversed "is thereby deprived of all conclusive effect." *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992). Courts thus should strive to avoid this "evil result[]." 9 A.L.R.2d 984. When a prior judgment has been appealed, the second court may hold the "disposition in abeyance until the pending appeal [is] resolved." *See Ruyle*, 44 F.3d at 846. Here, if this Court is inclined to grant collateral estoppel effect to the *Bautista* decision, it should hold its decision in abeyance until the Ninth Circuit rules.

Accordingly, this Court should simply address the proper scope of § 1225(b)(2) based on the analysis set forth above.

IV. Even if Petitioner's arguments are correct, he is not entitled to release.

Petitioner seeks "immediate release on bond." ECF No. 6 at 17. Even if the Court credits Petitioner's arguments, the remedy for such ills is not release. The proper remedy for lack of procedural due process is additional process, not immediate release. Thus, if the Court finds that Petitioner is detained not under § 1225(b)(2) but under § 1226(a)(1), the proper remedy is a bond hearing—as expressly contemplated in § 1226(a)(1).

CONCLUSION

For the reasons discussed above, the Court should deny the Petition.

Dated: January 22, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: julia.prochazka@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
Counsel for Respondents